

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - FLINT

WARRIOR LACROSSE, INC.,

Plaintiff(s),

vs.

STX, L.L.C.,

Defendant(s).

CASE NO.: 2:04-CV-70363-DT

2:04-CV-71842-DT

HON. JULIAN ABELE COOK, JR.

MAG. JUDGE WALLACE CAPEL, JR.

ORDER GRANTING DEFENDANT'S MOTION TO STRIKE
PLAINTIFF'S RESPONSE TO DEFENDANT'S REPLY BRIEF ON THE EVIDENCE
AND
ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO
FILE RESPONSE TO DEFENDANT'S REPLY BRIEF OF EVIDENCE
AND
ORDER STRIKING PLAINTIFF'S RESPONSE TO STX's REPLY BRIEF
ON THE EVIDENCE

This matter is before the Court on the Plaintiff's "Motion For Leave To File Warrior's Response To STX's Reply Brief Of Evidence," filed on September 13, 2006, [D/E #286], and the Defendant's "Motion To Strike Warrior's Response To STX's Reply Brief On The Evidence," filed on September 13, 2006, [D/E #287]. In support of its motion, Plaintiff is asking the Court that it be permitted to file a reply brief to the Defendant's post-hearing supplemental brief concerning the evidentiary hearing held on the Plaintiff's "Emergency Motion To Dismiss STX's Unenforceability And Invalidity Defenses Due To STX's Bad Faith And Deception," which was referred to the undersigned by the Honorable Julian Abele Cook, Jr. for hearing and the issuance of a Report and Recommendation on this motion. In its motion, the Plaintiff states that its response brief will be of assistance to the Court in making its determination on the briefs of both parties which have been

submitted to the Court.

The Defendant is opposed to the filing of the reply brief on the basis that neither the Court Rule permit such a filing, nor did the Court instruct the parties that a reply brief may be filed. The Defendant also argues that the Plaintiff did not seek concurrence as required under Local Rule 7.1(a)(1). The Defendant also seeks to file a response to the Plaintiff's Reply Brief should the undersigned grant the Plaintiff's motion to file a response.

Having considered both of the motions as well as having reviewed the record of the hearing held before the undersigned in this matter, the Court finds that the supplemental briefs that were previously filed by the parties at the conclusion of the hearings in this matter are sufficiently clear for the undersigned to make a determination of the issues presented in the motion to dismiss. At the conclusion of the evidentiary hearings, the undersigned instructed the Plaintiff to file a supplemental brief addressing its position as to the issues in this matter. Following their submission, the Defendant was to file its reply brief outlining the issues from their perspective. As indicated at the hearing, the undersigned was very explicit about the timing and filing of supplemental briefs for this matter and what exactly was to be submitted to the Court for consideration.

Accordingly, the Defendant's motion to strike the Plaintiff's response to its reply brief is hereby **GRANTED**. The Plaintiff's motion for leave to file a response to the Defendant's reply brief is hereby **DENIED**. The Plaintiff's "Response To STX's Reply Brief On the Evidence," filed on September 11, 2006, [D/E #285], shall not be considered by the Court and is hereby **STRICKEN**. **IT IS SO ORDERED.**

The parties are hereby informed that any objection to this order must be filed with the district court within 10 days after service, pursuant to Rule 72(a), Federal Rules of Civil Procedure.

DATED: September 25, 2006

s/ Wallace Capel, Jr.
WALLACE CAPEL, JR.
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on **September 25, 2006**, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send electronic notification of such filing to the following: John A. Artz, John S. Artz, Lawrence R. Jordan, George D. Moustakas, Robert P. Renke, George A. Sumnik, Scott R. Torpey, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participant(s) Lawrence J. Gotts, 1650 Tysons Blvd., McLean, VA 22012-4859, Steven W. Hays, 28333 Telegraph Rd., Ste. 250, Southfield, MI 48034, Eileen M. Herlihy, Ralph A. Loren, Rafael E. Rosado, 111 Huntington Ave., Boston, MA 02199, James K. Archibald, 1500 Bush St., Baltimore, MD 21230

s/James P. Peltier
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